

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DOYLE HALL,

Plaintiff,

v.

Civil Action No. 5:08CV91
(STAMP)

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Procedural History

The pro se¹ plaintiff, Doyle Hall, filed an application for Disability Insurance Benefits ("DIB") and for supplemental security income under Titles II and XVI, respectively of the Social Security Act. In the application, the plaintiff alleged disability since September 30, 2005, due to degenerative disc disease, herniated discs, pinched nerves, and numbness in his legs.

The Social Security Administration denied the plaintiff's application initially and on reconsideration. The plaintiff requested a hearing, and a hearing was held on June 12, 2007, before Administrative Law Judge ("ALJ") George A. Mills, III. On July 27, 2007, the ALJ issued a decision finding that the plaintiff was not disabled as defined under the Social Security Act because a significant number of sedentary jobs the plaintiff could perform

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1341 (9th ed. 2009).

exist in the national economy. The Appeals Council denied the plaintiff's request for review on February 28, 2008, rendering the ALJ's decision the final decision of the Commissioner.

Thereafter, the plaintiff filed the present action pursuant to 42 U.S.C. § 405(g), seeking judicial review of an adverse decision by the defendant, Commissioner of Social Security. In her complaint, the plaintiff alleges that the ALJ erred by failing to give sufficient weight to the reliability of the plaintiff's description of his pain; by failing to properly evaluate the combined effect of all of the plaintiff's impairments; and by failing to give sufficient weight to the opinion of the plaintiff's treating physician.

The case was referred to United States Magistrate Judge James E. Seibert for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Both the plaintiff and the defendant filed motions for summary judgment. On February 11, 2009, the magistrate judge entered a report and recommendation, recommending that the defendant's motion for summary judgment be granted, that the plaintiff's motion for summary judgment be denied, and that this case be stricken from the active docket of this Court. Upon submitting his report, Magistrate Judge Seibert informed the parties that if they objected to any portion of his proposed findings of fact and recommendation for disposition, they must file

written objections within ten days after being served with a copy of the report. To date, no objections have been filed.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a de novo review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Accordingly, this Court reviews the report and recommendation of the magistrate judge for clear error.

III. Discussion

Because neither party has filed objections, this Court relies upon the facts and standard of review as stated by the magistrate judge in his report and recommendation. This Court has thoroughly reviewed the record and finds no clear error in the magistrate judge's conclusion that the ALJ gave sufficient weight to the reliability of the plaintiff's statements about pain; that the ALJ properly evaluated the combined effect of all of the plaintiff's impairments; and that the ALJ accorded sufficient weight to the opinion of the plaintiff's treating physician. Accordingly, the magistrate judge's report and recommendation is affirmed and adopted.

IV. Conclusion

Because the parties have not objected to the proposed findings of fact and recommendation for disposition, and because this Court finds that the recommendation is not clearly erroneous, this Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation in its entirety. Thus, for the reasons stated above, the defendant's motion for summary judgment is GRANTED, and the plaintiff's motion for summary judgment is DENIED. It is further ORDERED that this case be DISMISSED and STRICKEN from the active docket of this Court.

Moreover, this Court finds that the plaintiff was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action will result in a waiver of appellate rights. Because the plaintiff has failed to object, she has waived her right to seek appellate review of this matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is directed to enter judgment on this matter.

DATED: July 31, 2009

/S/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE